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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Inter-Parliamentary Union, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 April 1998]

1. Defending and promoting the institution of parliament, a fundamental objective of the Inter-Parliamentary Union (IPU) - the world organization of national parliaments - entails the protection of the human rights of their members in order for them to be able to fulfil their role as guardian of human rights in their respective countries.

2. In 1976, the IPU thus established a procedure for the examination and treatment of communications concerning violations of the human rights of parliamentarians. A Committee on the Human Rights of Parliamentarians, made up of five members of parliament (MPs) representing the different geopolitical regions, was entrusted with investigating complaints. It meets in camera four times a year and, in a first stage, examines the cases laid before it confidentially in the light of international and national human rights norms. Under certain circumstances, the Committee may present at the two annual sessions of the Inter-Parliamentary Council, the Union's plenary governing body, a public report with recommendations for action.

3. The Committee is currently examining, under its public procedure, cases concerning 134 members of parliament in the following countries: Burundi, Cambodia, Colombia, Djibouti, Gambia, Honduras, Indonesia, Myanmar, Nigeria, Togo and Turkey.

4. The majority of the cases currently before the Committee concern member of parliament who are subjected to arbitrary measures for having criticized the Executive and thus, in the last report, for exercising their right to freedom of speech. Such criticism of government policies which may include an uncomplimentary reference to a head of State or Government officials, all too often results in penal charges, mostly for defamation, slander or insult, against the MPs concerned who may lose their parliamentary seat and be banned - sometimes for life - from political life. The Committee has constantly insisted that the right to freedom of speech is at the very heart of parliamentary democracy and would be quite meaningless if it did not comprise the right, in particular of the representatives of the people, to criticize the Executive. It is the right to freedom of speech which enables parliamentarians to fulfil their oversight function of the Executive branch, and the Committee has consistently affirmed that when parliamentarians report or denounce a possible malfunction of the Administration or the Judiciary, they simply fulfil their constitutional role.

5. The cases of Sri Bintang Pamungkas and Ms. Megawati Sukarnoputri, former members of the Indonesian House of Representatives, are cases in point. They also demonstrate the importance of the right to freedom of association for the functioning of parliamentary democracy. As regards Sri Bintang, he was first sentenced in May 1996 to 34 months imprisonment for insulting the Indonesian President by allegedly referring to him as a "dictator" during a seminar he gave at a German university. Sri Bintang, who is currently serving his sentence, is now again under trial, this time on subversion charges, mainly for having set up a political party, something which according to the Government's interpretation of the Constitution, is unlawful. As regards Ms. Megawati, she was unseated in June 1996 as leader of the Indonesian Democratic Party in what was widely considered to be a Government engineered move. As a result she was unable to stand for the May 1997 legislative elections. To date, the recommendations of the Indonesian National Human

Rights Commission, in particular that Government interference in the form of support for one side in a dispute should be guarded against have not been followed-up. In both cases, besides stressing the fundamental importance of the right to freedom of expression, the Committee recalled the principles upheld by the Inter-Parliamentary Union in its Declaration on Criteria for Free and Fair Elections and Universal Declaration on Democracy adopted in March 1994 and September 1997, respectively, with a delegation from the Indonesian Parliament in attendance, which affirm that everyone has the right to join, or together with others, to establish a political party or organization for the purpose of competing in an election.

6. Lim Guan Eng, an incumbent opposition member of the Malaysian Parliament was found guilty in April 1997 inter alia of "prompting disaffection with the administration of justice in Malaysia" for having criticized the Attorney General's handling of a statutory rape case by stating that "double standards" were being applied. If the judgement is upheld, Mr. Lim will forfeit his parliamentary mandate and may even face imprisonment. Recalling that there had been widespread public criticism of the Attorney General's handling of this case including from the Prime Minister's daughter herself who had called his attitude a "gross mockery of justice" and that, however, only Mr. Lim was prosecuted, the Committee inferred that his prosecution and sentencing were prompted by other than judicial considerations.

7. The case of Mr. Barreh, Mr. Houmed and Mr. Farah, former members of the National Assembly of Djibouti not only involves the right to freedom of expression but also the independence of the Judiciary. In June 1996, their parliamentary immunity was lifted to permit their prosecution for offending the head of the State whom they had accused of ruling by terror and force while trampling the Constitution underfoot. Despite a decision of the Constitutional Court in July 1996 that the procedure of the lifting of their immunity had been unlawful, their trial went ahead and they were sentenced to six months imprisonment and forfeiture of their civic rights for a period of five years, which resulted in their being unable to stand for the December 1997 parliamentary elections. Besides affirming that in making the allegedly offending statement, the MPs in question were merely exercising their right to freedom of speech, the Committee also considers that since the decision of the Constitutional Court was not heeded, the whole trial should be reviewed.

8. As regards the cases of several former Turkish parliamentarians of Kurdish origin who were sentenced - at the closure of trials which might have been seriously flawed - to various prison terms for belonging to and supporting a terrorist organization or for making separatist statements, the Committee has constantly expressed its fear that they may all have been prosecuted solely for having exercised their right to freedom of expression. It has called on the authorities to release the MPs concerned in accordance with their stated commitment to bring Turkish legislation into line with European human rights standards. The Committee also considers that the judgement delivered in November 1997 by the European Court of Human Rights in this case warrants their immediate release.

9. Among the Committee's major concerns is the question of impunity. Thus, in Colombia out of the six cases of Patriotic Union MPs assassinated in 1986, 1987, 1990 and 1994, and which the Committee declared admissible, only in one case, namely that of Senator Cepeda, have the investigations produced some result and led to the formal accusation, in October 1997, of two military officers and one paramilitary leader, Carlos Castaño. Another Colombian MP, Senator Motta, has for some time been receiving death threats which were denounced to the competent authorities. However, failing serious investigations into these threats which went unabated, Senator Motta was finally obliged to go into exile. The Committee has insistently urged the authorities to put an end to impunity, stressing that it poses a serious threat to democracy and human rights and constitutes a failure of the duty of the State to dispense justice.

10. Likewise, the Committee deplores that the authors of the grenade attacks carried out in October 1995 and March 1997 against leading former and incumbent parliamentary opposition members of the Cambodian National Assembly have remained unpunished although the authorities pledged to carry out thorough investigations. With a view to the forthcoming elections (July 1998), the Committee considers that the climate of impunity prevailing in the country is not conducive to the holding of free and fair elections.

11. In Burundi, the Committee deals with the cases of several members of the National Assembly belonging to the FRODEBU party who were assassinated or the target of attempts on their lives. In none of those cases have serious investigations every been carried out. In the latest case, that of the "disappearance" of Mr. Paul Sirahenda - widely considered to be an extrajudicial execution - no investigation at all seems to have been instituted.

12. In all these cases, the Committee has constantly been insisting on the duty of the State to dispense justice. It did so also in the case of Mr. Miguel Angel Pavón from Honduras, assassinated in 1988. Recently, a new investigation has been opened, new evidence has been produced which may finally lead to a formal accusation against military personnel.

13. Victims of arbitrary action have an enforceable right to due compensation and the Committee has consistently affirmed this right. In the case of three members of the Togolese Parliament assassinated in 1992 and 1994, the Government has now decided to grant compensation to the families of the victims. Although the Committee regretted that the right to know the truth and enjoy justice had finally not prevailed in this case, it was nevertheless satisfied at the Government's decision which, it hopes, will be rapidly implemented. In Gambia, Mr. Lamin wa Juwaara, a member of the Parliament dissolved in 1994 who suffered arbitrary detention, has brought a lawsuit against the Government requesting reparation. The Committee trusts that the Gambian Judiciary will rule on this question in accordance with the international human rights norms Gambia has subscribed to.

14. In a second case in Gambia, that of Mr. Omar Jallow who stands deprived of his political and civil rights - apparently on no legal basis - the Committee emphasized that such a punishment can in any case only be handed down by an independent tribunal in a fair trial.

15. In the great majority of the cases it has under review, the Committee obtains the cooperation of the authorities of the respective countries, in particular parliament. Military rulers prove to be less cooperative. Thus, the Committee has never obtained a reply to the many requests for information it has sent to the Nigerian authorities, including the National Human Rights Commission, in the cases of alleged harassment, arbitrary detention and prosecution regarding members of the Parliament dissolved in the coup d'état of 1993. Deploring this attitude which it deems contrary to all principles of international cooperation, the Committee has called on the authorities to comply with their obligations under international law and restore the rule of law without which there can be no genuine transition to civilian rule which the military rulers of the country have pledged to restore.

16. Likewise, the military rulers of Myanmar have not responded to the Committee's many requests for information regarding the situation of several National League for Democracy MPs-elect and in particular their conditions of detention. Their silence on this point and their de facto refusal to authorize the visit of an on-site mission, led the IPU to consider that the allegations of inhuman treatment and torture were indeed true and the authorities of Myanmar thus guilty of a manifest violation of the human rights of the persons concerned. Moreover, the Union has consistently called on the authorities to institute a genuine process of transition to democracy and expressed the hope that Myanmar's admission to the Association of South-East Asian Nations would contribute to bringing the law and practice of the country more into line with international human rights standards.